

to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) *Holding company systems.* The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) *E-Tag Authors and Balancing Authorities.* E-Tag Authors and Balancing Authorities must take appropriate steps to ensure Commission view-only access to complete electronic tags (e-Tags), or any successor to e-Tags, used to schedule the transmission of electric power in wholesale markets, by designating the Commission as an addressee on the e-Tags. E-Tag Authors must include the Commission on the list of entities with view-only rights to the e-Tags. Balancing Authorities located within the United States must validate the inclusion of the Commission on the e-Tag before those e-Tags are electronically delivered to an address specified by the Commission. The complete e-Tag data to be made available under this section shall consist of:

(1) e-Tags for interchange transactions scheduled to flow into, out of or within the United States' portion of the Eastern or Western Interconnections, or into the Electric Reliability Council of Texas from the United States' portion of the Eastern or Western Interconnection; or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection; and

(2) Information on every aspect of the e-Tag, including all applicable e-Tag IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules. In addition, e-Tag Authors and Balancing Authorities must also make available, upon request to the e-

Tag Authors and Balancing Authorities, access to the complete e-Tags, or any successor to e-Tags, used to schedule the transmission of electric power in wholesale markets, to Regional Transmission Organizations, Independent System Operators, and their Market Monitoring Units, on an ongoing basis, subject to appropriate confidentiality restrictions.

(e) *Confidentiality.* No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

[Order No. 667–A, 71 FR 28457, May 16, 2006, as amended by Order No. 771, 77 FR 76379, Dec. 28, 2012]

§ 366.3 Exemption from Commission access to books and records; waivers of accounting, record-retention, and reporting requirements.

(a) *Exempt classes of entities.* Any person that is a holding company solely with respect to one or more of the following will be exempt from the requirements of §§ 366.2 and 366.21 and any associated service company will be exempt from the requirements of §§ 366.2, 366.22, and 366.23; such person need not make the filings provided in § 366.4(a) or (b):

(1) Qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 *et seq.*);

(2) Exempt wholesale generators; or

(3) Foreign utility companies.

(b) *Exemptions of additional persons and classes of transactions—*(1) *Commission authority to exempt additional persons and classes of transactions.* The Commission shall exempt a person or class of transactions from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23 if, upon individual application or upon the motion of the Commission—

(i) The Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a

public utility or natural gas company; or

(ii) The Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

(2) *Commission exemption of additional persons and classes of transactions.* The Commission has determined that the following persons and classes of transactions satisfy the requirements of paragraph (b)(1) of this section, and any person that is a holding company solely with respect to one or more of the following may file to obtain an exemption for that person or class of transactions, as appropriate, from the requirements of §§ 366.2 and 366.21 (applicable to holding companies) and §§ 366.2, 366.22, and 366.23 (applicable to the holding companies' associated service companies), pursuant to the notification procedure contained in § 366.4(b):

(i) Passive investors, so long as the ownership remains passive, including:

(A) Mutual funds,

(B) Collective investment vehicles whose assets are managed by banks, savings and loan associations and their operating subsidiaries, or brokers/dealers; and

(C) Persons that directly, or indirectly through their subsidiaries or affiliates, buy and sell the securities of public-utility companies in the ordinary course of business as a broker/dealer, underwriter or fiduciary, and not exercising operational control over such companies;

(ii) Commission-jurisdictional utilities that have no captive customers and that are not affiliated with any jurisdictional utility that has captive customers, and that do not own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services and that are not affiliated with persons that own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services, and holding companies that own or control only such utilities;

(iii) Transactions where the holding company affirmatively certifies on behalf of itself and its subsidiaries, as applicable, that it will not charge, bill or allocate to the public utility or natural gas company in its holding company

system any costs or expenses in connection with goods and services transactions, and will not engage in financing transactions with any such public utility or natural gas company;

(iv) Transactions between or among affiliates that are independent of and do not include a public utility or natural gas company;

(v) Electric power cooperatives;

(vi) Local distribution companies that are not regulated as "natural gas companies" pursuant to sections 1(b) or 1(c) of the Natural Gas Act, (15 U.S.C. 717(b), (c)).

(vii) Natural gas companies that distribute natural or manufactured gas at retail to industrial or electric generation customers and/or distribute *de minimis* amounts of natural or manufactured gas at retail to farmer or rancher customers located adjacent to the natural gas company's rights-of-way.

(c) *Waivers.* Any person that is a holding company solely with respect to one or more of the following may file to obtain a waiver of the accounting, record-retention, and reporting requirements of § 366.21 (applicable to holding companies) and §§ 366.22 and 366.23 (applicable to the holding companies' associated service companies), pursuant to the notification procedures contained in § 366.4(c):

(1) Single-state holding company systems; for purposes of § 366.3(c)(1), a holding company system will be deemed to be a single-state holding company system if the holding company system derives no more than 13 percent of its public-utility company revenues from outside a single state (for purposes of this waiver, revenues derived from exempt wholesale generators, foreign utility companies and qualifying facilities will not be considered public-utility company revenues);

(2) Holding companies that own generating facilities that total 100 MW or less in size and are used fundamentally for their own load or for sales to affiliated end-users; or

(3) Investors in independent transmission-only companies.

(d) *Other requests for exemptions and waivers.* Any person seeking an exemption or waiver that is not covered by

paragraphs (a), (b)(2) or (c) of this section, shall file a petition for declaratory order pursuant to §385.207(a) of this chapter justifying the request for exemption or waiver. Any person seeking such an exemption or waiver shall bear the burden of demonstrating that such an exemption or waiver is warranted.

(e) Nothing in paragraphs (a)–(d) of this section shall affect the authority of the Commission under the Federal Power Act (16 U.S.C. 791 *et seq.*), the Natural Gas Act (15 U.S.C. 717 *et seq.*), or other applicable law, including the authority of the Commission with respect to rates, charges, classifications, rules, regulations, practices, contracts, facilities, and services under the Federal Power Act and Natural Gas Act and with respect to access to books and records under the Federal Power Act and Natural Gas Act.

[Order No. 667–A, 71 FR 28457, May 16, 2006, as amended by Order 667–B, 71 FR 42755, July 28, 2006]

§ 366.4 FERC–65, notification of holding company status, FERC–65A, exemption notification, and FERC–65B, waiver notification.

(a) *Notification of holding company status.* (1) Persons that meet the definition of a holding company as provided by §366.1 as of February 8, 2006 shall notify the Commission of their status as a holding company no later than June 15, 2006. Holding companies formed after February 8, 2006 shall notify the Commission of their status as a holding company, no later than the later of June 15, 2006 or 30 days after they become holding companies.

(2) The notification required pursuant to §366.4(a)(1) shall be made by submitting FERC–65 (notification of holding company status), which shall contain the following: The identity of the holding company and of the public utilities and natural gas companies in the holding company system; the identity of service companies, including special-purpose subsidiaries providing non-power goods and services; the identity of all affiliates and subsidiaries; and their corporate relationship to each other. This filing will be for informational purposes and will not be noticed in the FEDERAL REGISTER, but will be

available on the Commission’s Web site. FERC–65 must be subscribed, consistent with §385.2005(a) of this chapter, but need not be verified.

(3) Notwithstanding §366.4(a)(1) and (2), holding companies that are exempt holding companies pursuant to §366.3(a) are not required to notify the Commission of their status or to submit FERC–65 (notification of holding company status).

(b) *FERC–65A (exemption notification) and petitions for exemption.* (1) Persons who, pursuant to §366.3(b)(2), seek exemption from the requirements of §366.2 and the accounting, record-retention, and reporting requirements of §§366.21, 366.22, and 366.23, may seek such exemption by filing FERC–65A (exemption notification); FERC–65A must be subscribed, consistent with §385.2005(a) of this chapter, but need not be verified. These filings will be noticed in the FEDERAL REGISTER; persons who file FERC–65A must include a form of notice suitable for publication in the FEDERAL REGISTER in accordance with the specifications in §385.203(d) of this chapter. Persons who file FERC–65A in good faith shall be deemed to have a temporary exemption upon filing. If the Commission has taken no action within 60 days after the date of filing FERC–65A, the exemption shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the temporary exemption will remain in effect until such time as the Commission has determined whether to grant or deny the exemption. Authority to toll the 60-day period is delegated to the Secretary or the Secretary’s designee.

(2) Notwithstanding §366.4(b)(1), persons that are exempt holding companies pursuant to §366.3(a) are not required to file FERC–65A (exemption notification).

(3) Persons that do not qualify for exemption pursuant to §366.3(b)(2) may seek an individual exemption from this subchapter. They may not do so by means of filing FERC–65A and instead must file a petition for declaratory order as required under §366.3(d). Such